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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/826,849 | 04/16/2004 | Wayne Lewis | NMTECH16 | 2078 |
| 30996 | 7590 | 08/09/2006 | EXAMINER | |
| ROBERT W. BECKER & ASSOCIATES 707 HIGHWAY 333 SUITE B TIJERAS, NM 87059-7507 | | | ELDRED, JOHN W | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3641 | |

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/826,849 | Applicant(s) LEWIS, WAYNE | |
| | Examiner J. Woodrow Eldred | Art Unit 3641 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>01102005</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 4, “and/or” is alternative and indefinite. In claim 1, lines 5-6, “one or more attack threats” is vague and indefinite.

In claim 11, “at least one layer ... is disposed against at least on of said at least one first aluminum panel said threat protection means, and one another” is unclear as to what structure is being claimed.

In claim 15, “ballistic nylon or other high strength fabrics” is alternative and indefinite. Claims 8, 11, and 12 contain the trademark/trade name Kevlar. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an aramid fiber and, accordingly, the identification/description is indefinite.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3641

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brogan (4,223,053).

Brogan discloses a composite system comprising the claimed aluminum panel, and a plurality of aluminum tubes connected to the panel. See especially Figures 4 and 5; column 2, lines 44-55; and column 4, lines 38-52. It is inherent that the system will provide at least some degree of protection against attacks. It is inherent that the tubes will be filled with air, if they are not filled with the substance 17. Note also, that as currently claimed, the preamble phrase "to provide protection ..." is merely a statement of intended use.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9, 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brogan (4,223,053) in view of Dunn (5,349,893).

Brogan discloses a composite system comprising the claimed aluminum panel, and a plurality of aluminum tubes connected to the panel. See especially Figures 4 and 5; column 2, lines 44-55; and column 4, lines 38-52. It is inherent that the system will provide at least some degree of protection against attacks. It is inherent that the tubes will be filled with air, if they are not filled with the substance 17. Brogan fails to show that the system has ceramic tiles disposed on the aluminum panel, or to place another

Art Unit: 3641

layer of claimed materials between the ceramic tiles and the aluminum panel. Dunn teaches that it is well known to dispose ceramic tiles 21 on a panel 23 and dispose an aramid fiber (e.g. Kevlar) layer 22 between the panel and the tiles. See Figure 3.

Motivation to combine is to improve performance by improving the impact resistance of the structure so that it can withstand more damage without failure in the event of an impact. To employ the teachings of Dunn on the system of Brogan and have layers of aramid fibers and ceramic tiles on the panel of Brogan is considered to have been obvious to one having ordinary skill in the art.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brogan (4,223,053) in view of Dunn (5,349,893) as applied to claims 9, 10, 12, and 13 above, and further in view of Neal et al (6,745,661).

Brogan fails to show the structure being disposed in a fabric "sack". Neal et al teach that it is well known to provide a high strength fiber "sack" 14 around panels. See especially column 3, lines 23-28. Motivation to combine is the further protection provided by an additional layer and the reduction of "fragmentation" taught, in case of impacts on the system. To employ the teachings of Neal et al on the system of Brogan and have a high strength fabric sack is considered to have been obvious to one having ordinary skill in the art.

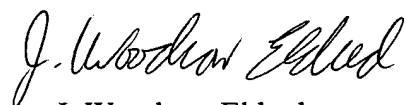
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mandall, Dobbs, and Gerber et al are cited as being of interest since they disclose protection systems.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Woodrow Eldred whose telephone number is 571-272-6901. The examiner can normally be reached on Monday to Thursday, from 8:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3641

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



J. Woodrow Eldred
Primary Examiner
Art Unit 3641

JWE